

simply ‘give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.’” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). (Citing *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).³

3. The portion of Plaintiff’s Complaint Defendants attack is undoubtedly in compliance with Rule 8(a)(2) in that it provides the short and plain statement, “Defendants’ actions amount to a breach of contract and/or unjust enrichment.”⁴ Clearly, Plaintiff is alternatively alleging that Defendants’ conduct amounts to a breach of contract and/or that Defendants have been unjustly enriched by their conduct.⁵

4. Plaintiff has undoubtedly carried his burden of notifying Defendants of his claim for breach of contract and/or unjust enrichment. If not, Defendants would not be moving the Court to dismiss these claims for allegedly failing to comply with Rule 10(b) of the Federal Rules. As a result, Defendants clearly recognize Plaintiff alternatively seeks to maintain these claims in addition to those sought under the Fair Labor Standards Act.

5. Furthermore, the “other provisions of the *Federal Rules of Civil Procedure* are inextricably linked to Rule 8(a)’s simplified notice pleading standard. Rule 8(e)(1) states that ‘no technical forms of pleading or motions are required,’ and Rule 8(f) provides that ‘all pleadings shall be so construed as to do substantial justice.’” *Id.* at 513-514.

6. Following the simple guide of Rule 8(f) that “all pleadings shall be so construed as to do substantial justice,” there is no doubt Plaintiff’s Complaint adequately sets forth a claim for breach of contract and/or unjust enrichment of which Defendants had fair notice.

³ Rule 8(a)’s simplified pleading standard applies to all civil actions. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 513 (2002).

⁴ See paragraph 23 of Plaintiff’s Complaint.

⁵ The alternative relief sought by Plaintiff is proper in light of the fact “relief in the alternative or of several different types may be sought.” Rule 8(a)(2) of the *Federal Rules of Civil Procedure*.

7. Defendants have been provided fair notice of Plaintiff's claims for breach of contract and/or unjust enrichment and therefore, Defendants have and will not be prejudiced by the allowance of paragraph 23 of Plaintiff's Complaint

8. Based upon the aforementioned, Defendants' Motion to Dismiss is due to be summarily DENIED.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully moves this Honorable Court for an Order denying Defendants' Motion to Dismiss or alternatively granting Plaintiff leave to file an amended complaint to cure the alleged defect.

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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2006, I electronically filed the foregoing document with the Clerk of this Court via the CM/ECF system, which will send notification of such filing to the following:

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